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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policies and Rules Concerning	)	
Unauthorized Changes of	)	CC Docket No. 94-129
Consumers' Long Distance	)	
Carriers	)	
	)	
	)	

REPLY COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, hereby submits this reply to the initial comments submitted in this proceeding. CompTel will focus its reply on three issues. First, the conflicting proposals submitted in this proceeding underscore the need for the Commission to preempt state regulation of the form, content, or necessity of an LOA. Second, several basic principles regarding a customer's responsibility for IXC charges should be recognized. Finally, a proposal to hold facilities-based IXCs responsible for slamming by reseller IXCs using its services should be rejected.

I. PREEMPTION OF STATE LOA REGULATION IS APPROPRIATE

All of the commenters in this proceeding agree on the basic goal of the Commission's LOA rules: to ensure customers receive truthful, non-misleading information in an understandable format, so that they can exercise their right to select an IXC of their choice. Despite this agreement, the proposed LOA requirements show

great variety in the details. This variety is good for a policy maker seeking to weigh all available options, but would be bad for an entity simultaneously subject to a federal rule and multiple, binding requirements (like a state's regulations) that mirrored the proposals advanced herein. The results for consumers and IXCs would be burdensome and potentially even more confusing than the present rules. It is for this reason that CompTel emphasizes the need for the Commission to preempt state LOA requirements.

Assume for purposes of illustration that each of the parties filing comments in this proceeding were a separate jurisdiction that had adopted as its own regulations the proposals it put forth in its comments. Now, further assume you were an IXC conducting business in all of these jurisdictions (or "states"). In order to serve your customers, you would want an LOA that complied with all of these "state" requirements, as well as with a federal requirement that was about to be adopted. Here are some of the requirements that would apply to your LOA: In most "states," you could use any title you believed appropriate for your LOA,[1] but in others your LOA must be called a "Long Distance Service Application."[2] In some "states" you would be required to include specific language directly below the signature line,[3] while in another state *different* language expressing the same idea would be required in a

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[1] *See, e.g.*, Sprint Comments at 13-14.

[2] Comments of America's Carriers Telecommunications Association at 7.

[3] Comments of Operator Service Company at 4.

different location.[4] Still another state would prohibit *any* language other than what is specifically prescribed.[5] Moreover, if you wanted to include an additional offer or inducement to the customer, you could do so in most states by making the offer on a separate page, but in some states you could not include it in the same envelope,[6] while in others you could combine the offer only if it were a check[7] or if it were a "credit" to "reimburse" the consumer for switching fees.[8] In another state, combined offers/LOAs are prohibited unless they appear in a "general advertisement."[9] Of course, our hypothetical IXC's task will be further complicated by the fact that still *another* set of requirements will be imposed by the federal government, and those requirements apply in all of the above "states" in addition to the state requirements.

Clearly, one single document would not suffice in these circumstances. If an IXC were to create a uniform LOA from these requirements, it would be cumbersome, repetitive, contradictory, and utterly confusing. Instead, an IXC probably would create several different LOAs, one for New York/FCC requirements, another for Florida/FCC, another for Maryland/FCC, etc. Even this would be impossible,

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[4] Comments of the Florida Public Service Commission at Attachment A, p. 2; *see also* Comments of the National Association of Attorneys General, et al. at 8.

[5] Comments of the National Association of Attorneys General, et al. at 5.

[6] Comments of Consumer Action at 2; Southwestern Bell Comments at 3.

[7] AT&T Comments at 12-15; Texas Public Utility Commission Comments at 2-3.

[8] Sprint Comments at 5-6.

[9] MCI Comments at 6-7.

however, where the state and the federal requirements are incompatible. This result thwarts the FCC's LOA policy of protecting against consumer confusion while preserving IXC flexibility in marketing.[10] Goals mentioned in this proceeding, such as the asserted benefits of "standard" LOAs, also would not be met. Nor would IXCs enjoy the flexibility that the Commission previously has concluded is instrumental to competition in interexchange services. For these reasons, an order preempting state requirements as to the form, content, or necessity of an LOA is appropriate.

II. CUSTOMER LIABILITY ISSUES

A second issue discussed by many commenters is the customer's responsibility for charges assessed by an IXC to which the customer was switched without authorization. CompTel maintains that these issues are better resolved in the complaint process, where a specific factual context can be presented for consideration.[11] Nevertheless, two basic principles should guide any policy pronouncements, whether expressed in this proceeding or elsewhere.

First, the Commission's rules should not encourage false or willfully delayed claims of slamming by the customer. A rule regarding customer liability for slamming should contain provisions to ensure that only *bona fide* claims are asserted (such as a requirement that a claim be made in writing). In addition, it should not contain an

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[10] *See* CompTel Comments at 3.

[11] *See* CompTel Comments at 8-9.

incentive for the customer to "neglect" to return a confirmatory LOA and then to falsely claim that a switch was not authorized. An overly generous absolution from liability is an invitation to such falsified claims. Similarly, any rule should require the customer to dispute a PIC change within a relatively short time period, so as not to encourage "slammed" customers to delay in asserting their claim in order to increase their reward.

Second, it should be recognized that, no matter what safeguards against slamming are adopted, IXCs will continue to submit orders in good faith that turn out to be authorized improperly, that, due to typographical errors, misidentify the phone number to be switched, or where a written authorization cannot be located (this remains particularly likely with telemarketing orders).[12] Therefore, customer payment rules should not extract a penalty from the "unauthorized" IXC, as some commenters advocate.[13] Punitive measures should be limited to switches knowingly and willfully made without authorization.[14]

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[12] *See, e.g.*, MCI Comments at 16.

[13] *See* Comments of the California Public Utilities Commission at 4; Comments of Consumer Action at 3; Southwestern Bell Comments at 7.

[14] This is an example of the type of determination that is best made with the fact-finding advantages of an adjudicative or quasi-adjudicative proceeding.

III. FACILITIES BASED IXCS SHOULD NOT BE HELD RESPONSIBLE FOR UNAUTHORIZED SWITCHES BY RESALE IXCS

The Florida Public Service Commission ("Florida PSC") argues that the Commission should require a facilities-based IXC to "bear some responsibility" when a "downstream reseller" initiates a PIC change that turns out to be unauthorized.[15] The PSC does not specify exactly what "responsibility" it proposes the facilities-based IXC should bear. It seems apparent that some sort of financial liability and/or an obligation to police the "downstream reseller" are intended. CompTel opposes this suggestion.

It would be inequitable for the Commission to hold facilities-based IXCs responsible for the improper actions of a reseller. First, the facilities-based carrier has no control over the reseller's actions. The reseller is an independent entity with its own personnel, policies, practices and strategies. Second, if a facilities-based IXC were held as a guarantor of the reseller's compliance, the IXC would be forced to impose numerous restrictions and conditions upon a customer's resale activities. This would be the only feasible way for the facilities-based IXC to monitor the reseller's compliance with applicable federal or state regulations. Such a result, however, would be inconsistent with longstanding Commission policies favoring unlimited resale of

[15] Florida PSC Comments at 3-4.

telecommunications services.[16] Therefore, the Florida PSC's proposal should be rejected.

Finally, it is not clear precisely what entity the Florida PSC has in mind when it refers to a "downstream reseller," although it appears that this term is intended to refer to a switchless reseller that does not possess a Carrier Identification Code ("CIC") of its own. As Sprint pointed out in its comments,[17] this situation can be confusing to the customer, particularly when the LEC identifies the facilities-based IXC, rather than the switchless reseller, as the customer's PIC. CompTel supports Sprint's recommendation that the Commission make clear that it is an unreasonable practice for a LEC to inform customers, through bills or otherwise, that the facilities-based IXC is the customer's PIC, *provided* the IXC has informed the LEC that particular telephone numbers are associated with the reseller and not the facilities-based IXC.[18] Commission clarification in this regard will lessen customer confusion and could assist

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[16] *See, e.g., Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, 60 F.C.C.2d 261 (1976), *aff'd sub nom American Telephone and Telegraph Co. v. FCC*, 572 F.2d 17 (2d Cir. 1978).

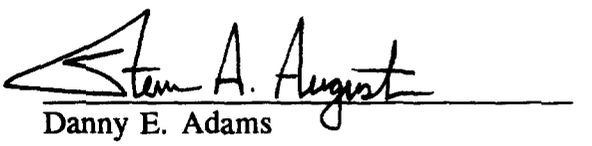
[17] Sprint Comments at 8-9.

[18] *Id.*

regulators like the Florida PSC in addressing problems associated with "downstream resellers."

Respectfully submitted,

THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

By: 

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